IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5283 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARISHBHAI MITHABHAI MARU

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5283 of 2003

MR MUKESH D RAVAL for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/07/2003

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 18-10-2002 passed by the Police Commissioner, Ahmedabad City, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and the learned AGP for the State. Also perused the record. Learned advocate for the petitioner has submitted that a single offence has been registered against the detenu at Prohibition Police Station, East Division, being Prohi.C.R.No.3289/2002 dated 15-10-2002. Drawing my attention towards page 17, Annexure-C, learned advocate Mr.M.D.Raval, for the petitioner has contented that when the order of detention was passed, the detenu was first in police custody and thereafter in judicial custody which aspect ought to have been considered by the authority while passing the detention order. In this connection, she has relied upon the case of Amritlal and Other Vs. Union Govt. Through Secy., Ministry of Finance and Others, AIR 2000 S.C. 3675 wherein it was held at Head note as under:

> "Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (46 of 1988), S.3--Satisfaction of detaining authority--"Likelihood of detenu moving an application for bail"--not sufficient--It is different from "Likelihood to be released on bail"".

4. It seems that there is non-application of mind on the part of detaining authority in passing the detention order as the detenu was in judicial custody when the order of detention was passed which aspect has not been considered by the authority and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained. Affidavit affirmed by the detaining authority is ordered to be taken on record.

5. The petition is allowed. The impugned order of detention dated 18-10-2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service

is permitted.

(R.P.DHOLAKIA,J.)

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